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FISH & RICHARDSON PC  
P.O. BOX 1022  
MINNEAPOLIS, MN 55440-1022

EXAMINER
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PORTER, RACHEL L

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID BAGGETT, GREGORY R. GALPERIN, and  
CARL G. DEMARCKEN

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Appeal 2007-3495  
Application 09/431,674  
Technology Center 3600

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Decided: December 11, 2008

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Before WILLIAM F. PATE, III, LINDA E. HORNER, and  
ANTON W. FETTING, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

David Baggett et al. (Appellants) have filed a request for rehearing under 37 C.F.R. § 41.52 requesting reconsideration of the Board's decision of September 16, 2008 ("Decision"), wherein the Board affirmed the rejection of claims 11-13 under 35 U.S.C. § 112, second paragraph and

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reversed the rejections of claims 1-34 under 35 U.S.C. § 103(a). The Board's affirmance of the rejection of claims 11-13 as indefinite was based on a finding that the Appellants' Specification does not provide a standard by which to measure the quality of data to distinguish low-quality data from high-quality data. Decision 8. The Appellants argue that the Board "overlooked several passages from Appellants' Specification that provide the standard required by the Board and to which 'low quality' and 'high quality' are ascertained." Request for Rehearing 1.

### THE INVENTION

The Appellants' claimed invention relates to the cost-effective use of multiple sources of seat availability information to produce high-quality answers in response to travel planning queries, such as airline reservations. Spec. 3:13-17. The language at issue in the indefiniteness rejection states that the process "speculatively determines the travel options using availability data that is determined to be low-quality data as though the data were high-quality data."

### ANALYSIS

The Appellants contend that the Board's findings of Facts 2-4 were in error because the Board overlooked certain disclosure in the Appellants' Specification. Request for Rehearing 1-4. In particular, the Appellants contend that a portion of the Specification comparing predictive cache or

other predictive sources to live queries provides a standard of “high” quality versus “low” quality data, because the Specification explains that cache queries are quick and cheap to perform but can have stale or incorrect data, while live queries are expensive but are up-to-date and correct. Request for Rehearing 2, citing Spec. 10:5-12. The Appellants further contend that “[a]ll of the predictive sources have lower quality data than the airline’s yield management system” and “among the predictive sources, implementation specifics and indeed the state of these other sources at any moment in time, would govern the quality levels of the various sources.” Request for Rehearing 3. The Appellants explain that “the results from an airline yield management system are the standard by which the quality of results from predictive sources is measured.” Request for Rehearing 4. Thus, a “high quality source” as used in claim 11, according to the Appellants, refers to an “airline yield system or a high quality predictive source.” Request for Rehearing 5-6.

In light of these arguments, the question still remains; how close to the airline yield management system do the data from a predictive source have to be to be considered a high-quality source? Would 75% accurate data suffice? Would the data have to be 85% accurate to be considered high quality? The Appellants’ Specification does not provide a standard by which to determine if a predictive source provides high quality or low quality data. Having considered the entire Specification anew, including the

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portions expressly highlighted by the Appellants in the Request for Rehearing, claims 11-13 are still indefinite.

### DECISION

Accordingly, while we have granted Appellants' request for rehearing to the extent that we have reconsidered our decision, the request is denied with respect to making any changes in the decision. No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

### DENIED

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